



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC 98 230 52249 Office: California Service Center Date:

AUG 15 2000

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

Public copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

John F. Corio
Terrance M. O'Reilly, Director
Administrative Appeals Office

August 6 - 042224

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a research scientist in water resource engineering. At the time he filed the petition, the petitioner was a graduate student at the [REDACTED]

[REDACTED] The regulation at 8 C.F.R. 204.5(h)(3) indicates that an

alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Counsel cites a number of claimed awards of varying significance; one claimed award is actually a certificate showing that the petitioner conducted a seminar. Counsel does not explain how this certificate constitutes a prize or award.

The petitioner's actual awards include a National Science and Technological Progress Award from China's State Science and Technology Commission, and first prize in the Science and Technological Progress Awards from China's Institute of Water Resources and Hydropower Research. The initial record offers little information about these awards.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner is a member of the National Society of Professional Engineers and the American Society of Civil Engineers. Beyond the above memberships, counsel cites "testimonial letters from recognized national and international experts, verifying that [the petitioner] has a record of outstanding achievement in the chosen field." These letters, while they may address the significance of the petitioner's contributions, cannot satisfy this criterion. The memberships themselves must be contingent on outstanding achievements. The petitioner cannot separate the criterion into two parts by stating that he is a member of associations, and that recognized experts have judged his achievements as outstanding. The petitioner has not shown that membership in the above associations is limited to individuals with outstanding achievements.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

Counsel notes the petitioner's participation as a lecturer and in panel discussions. Counsel does not explain how presenting a lecture constitutes judging the work of others.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Several witness letters accompany the petition. These witnesses have supervised the petitioner's work on individual projects or otherwise worked or studied alongside the petitioner. For example, [REDACTED] Ph.D., chief of the Water Resources Branch of the [REDACTED] of the [REDACTED]

[REDACTED] states that the petitioner "played a leading role in the project coordination, technical plan and project management" in projects which "demonstrated a new method of optimized utilization of water resources in a large-scale system." Dr. [REDACTED] asserts "the method developed in these projects have been widely used in other countries."

Several witnesses attest to the petitioner's role in a project entitled "Backflow Prevention Test and Calibration," asserting that the petitioner's research represents a significant contribution towards preventing the contamination of drinking water. Professor [REDACTED] Ph.D., of [REDACTED] states that the petitioner's "back flow prevention methods have been used in the portable delivery and distribution system all over the country."

These individuals assert that the petitioner is among the best in his field, but they do not establish that the petitioner is nationally or internationally known for his work.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The record contains copies of several technical pieces by the petitioner. Some of these appear to derive from internal reports rather than published journals. Counsel asserts that others have cited the petitioner's work, but the only citation on record is a citation in an article by [REDACTED] who along with the petitioner co-wrote the article cited. [REDACTED]'s self-citation does not establish wider notice, and the piece cited is a research report.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel asserts that the petitioner fulfills this criterion through his work for the United Nations Environmental Program; the

Institute of Water Conservancy and Hydroelectric Power; the United Nations Natural Resources and Energy Division; and the China Institute of Water Resources and Hydropower Research. The petitioner has written reports for these entities, but one does not necessarily perform in a leading or critical role simply by performing research. More information, preferably from ranking officials of the organizations in question, would be needed before the Service could conclude that the petitioner is or was among the most important employees of the above entities.

Furthermore, while for instance the United Nations is certainly an organization with a distinguished reputation, it does not necessarily follow that every subdivision of the United Nations, let alone every individual project undertaken by such subdivisions, enjoys such a reputation.

Counsel also lists state, provincial, or local level organizations. Because these organizations are not at the international or national level, the petitioner must show that the organizations enjoy prestige beyond their own jurisdictions. If every local or state government agency were said to have a distinguished reputation, then the term "distinguished" would be meaningless because it would not "distinguish" between one such organization and another.

The director denied the petition, stating that the petitioner had failed to provide sufficient information about the petitioner's prizes, leading roles in major projects, and so on, and therefore the Service could not determine that the petitioner is nationally or internationally acclaimed at the top of his field.

On appeal, in the "Statements of Facts" section of the brief, counsel asserts that the petitioner has won national and international recognition for his work. Such recognition is not a factual premise for counsel's other arguments, but rather very much a key issue in contention. Counsel thus grounds his arguments on the foundational presumption that the petitioner has already proven eligibility, which is not the case.

Counsel cites previous appellate decisions and a court case involving a jurisdiction which does not encompass the California Service Center, comparing those cases with the instant petition. Counsel does not provide documentation from those cases which would allow for a fuller comparison of the actual evidence rather than counsel's characterization of that evidence.

On appeal, a letter from the [REDACTED] explains the significance of several of the petitioner's awards. For example:

In [REDACTED] the State Science and Technology Commission awarded [the petitioner] the First Award of National Scientific Achievement ([REDACTED] on the Project "Water Resources Management in North China." This award is very selective and only evaluates and reviews 5 of the top 10,000 research submissions submitted over a 5-year period of time.

This letter clarifies the petitioner's awards and supports the conclusion that the petitioner has in fact received qualifying national awards.

With regard to the petitioner's membership in various associations, counsel observes that the associations themselves are distinguished, but here again counsel invokes fragmentary elements of a separate criterion rather than showing that the petitioner meets the wording of this one criterion. If one can become a member of an association simply by working in a given field, and paying annual dues, then that association, whatever its prestige, does not require outstanding achievements of its members. Similarly, fixed levels of required employment experience and/or education are not outstanding achievements. Rather than simply present documentation of the associations' membership requirements, counsel has repeatedly attempted to define the petitioner into this criterion by altering the wording of the regulation.

The appeal contains additional letters from the petitioner's professors, employers, and co-workers, including a prospective employer who offers the petitioner \$55,000 per year "as manager of waste water engineering in our [REDACTED] office." None of these letters demonstrates that the petitioner is well-known throughout the entire field, even among those who have never met or worked with him. The statute requires "substantial documentation" of "national or international acclaim," a burden which cannot be satisfied by witness letters attesting the unavoidably subjective assertion that the petitioner is "the best" or "at the top."

As noted above, the petitioner has met the criterion pertaining to prizes and awards. Witness statements also credit the petitioner with original contributions of major significance, although these statements often lack critical detail or corroboration. For example, assertions that certain of the petitioner's innovations are "widely used" are not supported by specific, documented examples. Evidence submitted under other criteria addresses those requirements only weakly, without demonstrating sustained acclaim or extraordinary ability. For instance, a researcher does not automatically earn acclaim by publishing his or her work. The publication record must be compared against the field in general. In this instance, the petitioner has not shown that his publications exceed, in distribution or in impact, those of others in the field. The wording of the regulations repeatedly stresses the importance of comparison between the alien seeking benefits and

others in the field. It cannot suffice simply to list the petitioner's accomplishments and then declare that these accomplishments have earned him sustained acclaim.

The petitioner has enjoyed significant success in his field, while earning the respect and admiration of his employers and collaborators. At the same time, he had not yet completed his education when he filed the petition. He has not shown that his reputation is truly national or international in scope, as it must be to meet the plain wording of the statute. The petitioner has not produced objective evidence to establish that he is generally regarded (even by those who have never worked with him) as one of the most important figures in his field. While the Service acknowledges his prizes, it remains that, by regulation, prizes of that level do not, by themselves, mandate a finding of eligibility.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a water resources engineer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.